



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 5101-99
5 November 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 1 May 1974 for four years at age 18. The record reflects that during the eight month period from July 1974 to March 1975 you received two nonjudicial punishments for malingering and two instances of failure to go to your appointed place of duty. During this period you were also advanced to PFC (E-2).

On 2 July 1975 you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for theft of a stereo receiver and turntable, four pair of trousers and a shirt, the total value of which was about \$588; and unlawful entry into a LCPL's cubicle with the intent to commit larceny. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As a result of this request, you admitted your guilt of the foregoing offenses. A staff judge

advocate reviewed the request and found it sufficient in law and fact. On 23 July 1975 the discharge authority approved the request and directed an undesirable discharge. You were so discharged on 30 July 1975.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, low test scores, and the fact that it has been more than 24 years since you were discharged. The Board noted the contentions that your attorney told you that your discharge would be automatically changed after three years, and you were "set up" on the charges so that your superiors could go free on more serious charges. You allege that a number of Marines were killed or injured when your superiors ordered a Marine driver to carry more passengers in a vehicle than was safe or authorized. You claim that since you were the only person who knew about the incident, you were framed on theft charges.

The Board concluded that foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of two NJPs and the fact that you accepted discharge rather than face trial by court-martial for serious charges of stealing from other service members. Your contentions and allegations of wrongdoing by superiors have no bearing on the offenses to which you admitted guilt. Further, your contentions and allegations are neither supported by the evidence of record nor by any evidence submitted in support of your application. There are no automatic provisions for upgrading a discharge and there is no evidence in the record that you were told there was. At the time of your discharge, you were advised that you could apply to the Naval Discharge Review Board or this Board. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. Given all the circumstances of your case the Board concluded your discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director